

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
INDIVIDUAL PRACTICES OF JUDGE LAURA TAYLOR SWAIN

The following Individual Practices Rules apply to all civil and criminal matters pending before Judge Swain on and after September 12, 2002. Civil Cases § 1.A.3 reflects a change from the prior version of these Chambers Rules.

Unless otherwise ordered by Judge Swain, matters before Judge Swain shall be conducted in accordance with the following practices:

GENERAL MATTERS

Communications with Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. All correspondence must be labeled with the name and docket number of the case and the Judge's initials (LTS). Copies of correspondence between counsel shall not be sent to the Court. Prior to requesting judicial action, the requesting counsel shall consult with all other parties in an effort to obtain their consent to the request. The letter to the Court shall confirm that such effort has been made and shall indicate whether the request is being made on consent.

B. Telephone Calls. Except as provided in Paragraph (D) below, telephone calls to chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call chambers at (212) 805-0417.

C. Faxes. Faxes to chambers are permitted only if copies are also simultaneously faxed or delivered to all counsel. No document longer than five (5) pages may be faxed without prior authorization. Do not follow with hard copy. The fax number is (212) 805-0426.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling and calendar matters, call Ms. Barbara Durocher at (212) 805-0419 between 2:00 p.m. and 4:00 p.m.

E. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must be made in writing, with copies to all other counsel and/or unrepresented parties, and must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order (reflecting only business days) must be attached. If the request is for an adjournment of a court appearance, absent an emergency it shall be made at least 48 hours prior to the scheduled appearance.

CIVIL CASES

1. Motions

A. Pre-Motion Conferences in Civil Cases; Briefing. For discovery motions, follow Local Civil Rule 37.2. For motions other than discovery motions, pre-motion conferences are not required. Unless otherwise directed by the Court in the particular case, a motion shall be briefed in accordance with the schedule set forth in Local Civil Rule 6.1.

1. Informal efforts to resolve issues required. Prior to making any motion, and prior to requesting a conference on any discovery issues, the parties shall use their best efforts to resolve informally the matters in controversy. Such efforts shall include, but need not be limited to, an exchange of letters outlining their respective legal and factual positions on the matters and at least one telephonic or in-person discussion of the matters. The movant, or party requesting a discovery conference, shall include in its motion papers or written request a certification that it has used its best efforts to resolve informally the matters raised in its submission.

2. Motions for default judgments. A party wishing to obtain a default judgment shall notify the Court by letter (copied to the party against which a default judgment is to be sought) of its desire to seek a default judgment. The Court will direct the party as to whether evidentiary submissions will be required in connection with the motion. Default judgments will be granted only upon written motion with notice to Defendant(s) and their counsel, if known. Copies of the Clerk's Certificate, and of proof of service of the Summons and Complaint and the Motion for Default Judgment, shall be attached to the Motion for Default Judgment.

3. Motions for withdrawal or displacement of attorney of record. An attorney who has appeared as attorney of record for a party may be relieved or displaced in accordance with Local Civil Rule 1.4. A motion pursuant to Local Civil Rule 1.4 must be accompanied by (a) an affidavit of the applicant attorney's client, confirming the client's consent to the withdrawal, displacement, substitution or other change in representation or (b) in the absence of such consent, proof of service of the application on the client.

B. Evidentiary Support; Local Rule 56.1 Statement. Evidentiary support, in admissible form, of all factual assertions relied upon in support of or in opposition to a motion shall be filed and served with the moving or opposition papers, as the case may be. Recitals in notices of motion, attorneys' affirmations, assertions of material factual matters "on information and belief" and the like are generally insufficient to establish factual matters. Each numbered paragraph of a Local Rule 56.1 Statement submitted on a motion for summary judgment shall address only one (1) factual assertion. The response to the Local Rule 56.1 Statement shall contain numbered paragraphs and shall state in each paragraph specifically what is admitted, what is disputed, and the basis for any factual dispute.

C. Courtesy Copies. One set of courtesy copies of all pleadings and motion papers, marked as such, shall be submitted to the Court's mail receiving facility, for chambers, as soon as practicable after filing.

D. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

E. Filing of Motion Papers. Motion papers shall be filed promptly after service.

F. Oral Argument and Evidentiary Proceedings on Motions. Parties may request oral argument and/or indicate the need for an evidentiary hearing at the time their moving, opposing or reply papers are filed, by including a conspicuous notation of the request on the cover page of the relevant paper. The Court will determine whether argument will be heard and/or whether an evidentiary proceeding is required to resolve disputed factual issues and, if so, will advise counsel of the relevant date.

2. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Joint pretrial orders are not required unless specifically directed by the court in a particular case.

B. Filings Prior to Trial in Civil Cases. Unless a scheduling order specifying pre-trial submission requirements has been issued in the particular case, each party shall serve and file, 15 days before the date of commencement of trial:

1. In jury cases, requests to charge and proposed *voir dire* questions. When feasible, proposed jury charges should also be submitted on a 3.5" diskette or CD in WordPerfect version 6 or higher format;
2. In nonjury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element;
3. In all cases, motions addressing any evidentiary or other issues which should be resolved *in limine*; and
4. In any case where such party believes it would be useful, a pretrial memorandum.
5. In all cases, the parties shall in addition file a joint statement setting forth the following:
 - i. A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented);
 - ii. Any stipulations of fact or law;
 - iii. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition;
 - iv. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party; and
 - v. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

When feasible, the joint statement should also be provided to the Court on a 3.5" diskette or CD in WordPerfect version 6 or higher format.

3. Proposed Orders and Judgments

A. Submission of Proposed Orders and Judgments. All proposed orders, including stipulations to be "so-ordered," shall be brought first to the Orders and Judgments Clerk at 500 Pearl Street, for approval as to form, before being submitted for Chambers. If a copy of the signed order is to be returned, please include a copy and a stamped, self-addressed envelope.

B. Electronic Format. Proposed orders and judgments should be accompanied by a version of the document on a 3.5" diskette or CD in WordPerfect version 6 or higher format.

CRIMINAL MATTERS

A. Initial Pre-trial Conference. The Assistant U.S. Attorney shall contact Chambers as soon as possible after the case is assigned to Judge Swain. The Assistant shall give all pertinent information to Chambers, including a faxed copy of the information/indictment. The Courtroom Deputy will set up a conference/arraignment.

B. Substitution of Counsel. When there is a substitution of defense counsel, counsel of record must contact the Deputy Clerk to schedule a conference. At the conference, the Court will address the application by defense counsel to be relieved. The defendant, counsel of record, the proposed replacement counsel, and the Assistant United States Attorney must all attend the conference.

C. Motions.

1. In making discovery motions, counsel are expected to comply with Southern District Local Criminal Rule 16.1. Any discovery motion must contain a Rule 16.1 affidavit.

2. Counsel should provide two courtesy copies of all motion papers to Chambers. When feasible, the memoranda of law should also be provided to the Court on a 3.5" diskette or CD in WordPerfect version 6 or higher format.

3. Except for good cause shown, all motions *in limine* shall be interposed so as to permit full briefing prior to the final pretrial conference date.

D. Pleas. Defense counsel are expected to have reviewed any plea, cooperation, or other agreement, as well as any Advice of Rights form provided to counsel by the Court – with the assistance of an interpreter, if necessary – with the defendant prior to the time set for the conference with the Court.

E. Sentencing.

1. Any request for adjournment of a sentencing shall be made in writing as early as possible, but no later than three business days before the date at issue. Such requests should state whether opposing counsel consents.

2. All submissions and applications with respect to a sentencing shall be served and submitted to the Court in sufficient time to ensure that the Court has received all such papers and all responses thereto no later than five days prior to the sentencing.